IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2007

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.No.19173 of 2006
and
W.P.M.P.No.1 of 2006
and
W.V.M.P.No.2 of 2006

V.Pichaipillai
... Petitioner

Vs.

The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai 600 005.
... Respondent

PRAYER: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari, calling for the records relating to the order in Na.Ka.No.A1/10475/06, dated 20.06.2006 on the file of the Managing Director, Tamil Nadu Slum Clearance Baord, Chennai 600 005 and quash the same.

For Petitioner : Mr.R.Subramanian, S.C. For
Ms.S.Hemalatha
For Respondent : Mr.K.Elango

O R D E R

The writ petition is filed challenging the order of the respondent dated 20.06.2006 under which, the petitioner who was working as a Revenue Officer North, is directed to be posted in the Office of the Superintending Engineer, Madurai on work arrangement basis.

2. According to the petitioner, while he was working as Assistant Secretary, by an order dated 18.05.2006, he was transferred from the post of Assistant Secretary administration to that of the Revenue Officer North. According to him, the said transfer was made by the political influence and at the instance of an affiliated union again due to the political pressure. Thereafter, the impugned order came to be passed transferring the petitioner from Chennai to Madurai. According to him at Madurai there is no post of Revenue Officer or Assistant Secretary in the circle office of the Superintending Engineer therefore, the order is illegal. Further the order is challenged on the ground that under the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1972, there is no

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post of Managing Director to be in charge of administration and therefore, the order passed by the respondents is without jurisdiction.

3. It is also challenged on the ground that it is malafide. The impugned order is further challenged on the ground that it is violative of G.O.Ms.No.10 dated 07.01.1974, which stipulates that the transfer should be effected before the academic year. According to the petitioner, he is going to retire on 30.06.2007. Further, ever since the constitution of the board in the year 1971, no person in the cadre of Assistant Secretary was transferred to any moffusil division, since there was no such post in the said Divisiions. It is also further stated that the petitioner working in the cadre of Assistant Secretary / Revenue Officer is in the non technical post, now he is directed to work under a person holding the technical post.

4. The respondent has filed the counter affidavit. It is the case of the respondent that since the petitioner was working as Assistant Secretary Administration between 16.05.2001 and 25.01.2006 for a long period, he was transferred as a Revenue Officer North on 18.05.2006. It was after a review, found that the collection in the mofussil area in Madurai and Tirunelveli were very poor and therefore, it was decided to divert one of the Revenue Officer to Madurai circle. Earlier also such order was passed. In fact one post of Estate Officer was diverted to Madurai division from Trichy division to improve the collection work. The petitioner was also diverted to Madurai circle to look after the collection work in Tirunelveli and Madurai divisions and he has also relieved on 21.06.2006 as per the board proceedings dated 20.06.2006. In the place of the petitioner one S.Chelladurai was posted and he was also joined on 25.06.2006. The transfer of the petitioner from the post of Assistant Secretary Administration to Revenue Officer North was not due to any political reason. By invoking powers under Section 35 and 36 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, the Government passed G.O.Ms.No.11 Housing and Urban Development (SC-III) Department, dated 21.01.1998, by which the post of Managing Director was created with effect from 10.03.1997 and from that date the Managing Director is exercising all the administrative powers and therefore, it is not correct to state that the respondent has no jurisdiction to pass orders.

5. Earlier the petitioner has taken the order from the respondent for transfer from Assistant Secretary Administration to Revenue Officer North without any reservation and therefore, it is not now open to the petitioner to challenge the same, since Rs.548 lakhs are to be collected in Madurai circle, the transfer is effected with a bonafide intention. The petitioner is posted at Madurai only to look after the collection work and not for doing any other technical work.

6. The petitioner has filed a reply affidavit stating that he joined srevice as a Revenue Officer North only under the Board proceeding dated

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18.05.2006. The petitioner also would state that in Chennai City itself there are Rs.2000 lakhs of arrears to be collected. In such circumstances, transferring the petitioner to Madurai is not in the interest of the board. The exercise of the power by the respondent under the Act 11 of 1978 is illegal. Therefore, according to the petitioner he reiterates that it is only the Slum Clearance Board which is the authority to pass any orders.

7. Mr.R.Subramanian learned Senior Counsel appearing for the petitioner would submit that under the Tamil Nadu Slum Clearance Board Non Technical Officers Service Rule 1972, the post of Assistant Secretary is created as category IV. He would also state that there is another rule called Tamil Nadu Slum Clearance Board Technical Subordinate Service rules, in which the category II consist of the post Estate Officer and Vigilance Officer. He would also state that as per the Tamil Nadu Slum Clearance Board Service Rule 1972, Rule 2(25) the word "transfer" means posting of a person under the Slum Clearance Board to an identical post in another branch or division of the board. According to him, the post of Revenue Officer is neither mentioned in the Technical Officers Service Rules nor in the Non Technical Subordinate Service Rules. Since the petitioner's appointment originally was that of the Assistant Secretary which is the Non Technical Officers Service in Category IV, by transferring to Madurai in the Revenue Officer Category, it should be taken as a transfer effected not to the identical post. He would state that as per the said Tamil Nadu Slum Clearance Board Non Technical Officers Service Rules, 1972, in respect of Category IV relating to Assistant Secretary, the appointing authority is the Slum Clearance Board. The Slum Clearance Board is as established under Section 34 of the Act as a body corporate with its constitution under Section 35 consisting of the Chairman and other members of the board. Therefore, according to him the Tamil Nadu Slum Area (Improvement and Clearance) Act, 1971, and the Tamil Nadu Slum Clearance Board Non Technical Officers Service Rule 1972, which also states that Slum Clearance Board is the appointing authority for cadre of Assistant Secretary, the Managing Director has no right to pass such orders either appointing or transferring the petitioner.

8. The learned Senior counsel also would submit that as per the Tamil Nadu Slum Clearance Board Service Rule 1972 Rule 31, specifically with reference to clause (b) says that all transfers and postings shall be made by the appointing authority and in the present case when the appointing authority for the Assistant Secretary is that of the Slum Clearance Board, the transfer effect by the Managing Director is not in accordance with law.

9. On the other hand, the learned counsel appearing for the respondent Board would submit that the post of Revenue Officer, even though the same has not been included in any one of the categories of the Tamil Nadu Slum Clearance Board Non Technical Officers Service Rules, 1972, it was based on the suggestion and proposal given by the Tamil Nadu

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Slum Clearance Board for the purpose of augmenting the collection, the Government in G.O.Ms.No.708 Housing and Urban Development Department dated 02.06.1987, has granted approval for appointment of 3 posts of Revenue Officers in the cadre of Chief Revenue Officer for a period of 6 months and accordingly, the said post continued in which the petitioner was transferred as a Revenue Officer North on 18.05.2006.

10. It is the further case of the learned counsel for the respondent that it was by G.O.Ms.No.11 Housing and Urban Development dated 28.01.1998, the post of Managing Director was created with effect from 10.03.1997 to implement the various slum clearance schemes and coordinate with the Government and I.A.S. Officers are appointed and the same continues as on date. Therefore, according to him the Managing Director being the head of the board is competent to make appointment as well as transfer on behalf of the Slum Clearance Board and therefore, he would contend that it is only a transfer on administrative ground and cannot be assailed by the petitioner at all and prayed for the dismissal of the writ petition and to vacate the order of stay granted by this Court.

11. I have heard the learned counsel for the petitioner as well as the respondents and perused the records.

12. At the out set it is relevant to point out that the Slum Clearance Board is established under Section 34 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act 1971. The Sections 34 and 35, which are relevant state as follows:

> "34. Establishment of Slum Clearance Board.- (1) with effect from such date as the Government may, by notification, appoint in this behalf there shall be established by Board by the name of the Tamil Nadu Slum Clearance Board.
>
> (2) The Board shall be a body corporate having perpetual succession and a common seal, and shall, by the said name sue and be sued.
>
> 35. Constitution of the Board.- (1) The Board shall consist of a Chairman and such member of other official and non-official members not exceeding fifteen as may be prescribed.
>
> (2) The Chairman and other members of the Board shall be appointed by the Government.
>
> (3) No act or proceeding of the Board shall be invalid by reason only by the existence of any vacancy among its members or any defect in the appointment of a member thereof."

13. Therefore, the board consists of Chairman and other members as appointed by the Government. Section 37 while dealing with the appointment of officers and servants says that the Secretary to the Board is appointed by the Government and he is the Chief Executive Officer of the Board. As on date the Act does not contain a clause regarding the post of Managing Director, even though the post of Chairman as the Head of

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the Board finds place under Section 35 of the Act.

14. As I have pointed out earlier, it is the contention of the learned counsel appearing for the Board that by G.O.Ms.No.11 Housing and Urban Development Department dated 28.01.1998, the post of Managing Director was created. It is relevant to point that the Slum Clearance Board has sent a proposal for creating a post of Managing Director in I.A.S. cadre, since the post is required to implement the various Slum Clearance Scheme effectively and to have a coordination with the Government and other departmental agencies. It was considering the said proposal, in the said G.O. the Government has passed the following order:

> "3. The Government accordingly accept the proposal of the Tamil Nadu Slum Clearance Board and create a post of Managing Director in the Tamil Nadu Slum Clearance Board with effect from 10.03.1997 F.N. Pending action on making the incumbent to the post as member of the Tamil Nadu Slum Clearance Board and Chief Executive Officer of the Board by amending relevant section of the Tamil Nadu Slum Clearance Board, Act."

15. It was by the said G.O. the post of the Managing Director was created. However, it remains the fact that no steps taken to make the Managing Director as a member of the Tamil Nadu Slum Clearance Board and as the Chief Executive Officer of the Board and as on date it is clear that no amendment has been made and the Tamil Nadu Slum Clearance Act either for the purpose of inducting the post of Managing Director or making him as a Chief Executive Officer. In the absence of such amendment to the said Act, the Tamil Nadu Slum Areas (Improvement and Clearance) Act 1971, as it stands today it only makes the Secretary as the Chief Executive Officer of the Board, apart from the Chairman and other members appointed by the Government.

16. Now coming to the post of Revenue Officer, as per the Rules framed under the Act, namely, the Tamil Nadu Slum Clearance Board Non Technical Officers Service Rules, 1972, as on date there are 6 categories of officers, namely,

Category 1	Secretary to the Slum Clearance Board
Category 2	Chief Revenue Officer
Category 3	Senior Accounts Officer
Category 4	Assistant Secretary
Category 4a	Public Relations Officer
Category 5	Accounts Officer

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That is seen in Rule No.2, which speaks about the constitution of service of Non Technical Officers.

17. Rule 4 of the said rules, which speak about the Appointing Authority states that in respect of category 1, namely, Secretary to Slum Clearance Board, the State Government is the appointing authority and in respect of other categories Slum Clearance Board is the appointing authority. As I have stated earlier, the Slum Clearance Board is a body corporate consisting of Chairman and members official and non-official not exceeding 15 appointed by the Government. Therefore, even assuming that no amendment has been made under the Act for the purpose of making the post of Managing Director as a statutory one, a reading of G.O.Ms.No.11 Housing and Urban Development dated 28.01.1998 shows that the said Managing Director shall be one of the members of the Board and therefore, he can at the most be a member of the board and cannot be the board by himself.

18. Now, turning to the post of Revenue Officer, a reading of the service rules both Non Technical and Technical Officers Subordinate Service Rules, the post of Revenue Officer has not been statutorily prescribed. A reference to G.O.Ms.No.708 Housing and Urban Development dated 02.06.1987 as submitted by the learned counsel appearing for the respondent would show that in order to augment the income of the board by way of effective collection, there was only one officer in the name of Chief Revenue Officer, who is shown at category No.2 in the Tamil Nadu Slum Clearance Board Non Technical Officers Service Rules 1972, and in order to achieve the above said object of collection 3 posts of Revenue Officer in the cadre of Chief Revenue Officer was created by the said G.O. on temporary basis for a period of 6 months. The relevant portions of the said G.O.Ms.No.708 as follows:

> 5. குடிசைப்பகுதிமாற்று வாரியத்தலைவர் அவர்களின் கோரிக்கையினை, அரசு நன்கு பரிசீலித்து, தலைமை வருவாய் அலுவலர் பதவி அந்தஸ்த்தில் அடிப்படை சம்பளம் ரூ 1340/75/ 1715/90/2435 ல் வருவாய் அதிகாரி என்ற இனத்தில் கூடுதலாக மூன்று பதவிகளை ஆறு மாதங்களுக்கு மட்டும் தற்காலிகப்பணியின் அடிப்படையில் கீழ்கண்ட நிபத்தனைகளுக்கு உட்பட்டு, உருவாக்க நியமனம் செய்ய அரசு ஒப்புதல் அளிக்கிறது/
>
> (1) வசூல் செய்வதைப்பொறுத்தவரையில் நடப்பு மாதகேட்பில்(ஊரசசநவே னநஅயனே) மாதாமாதம் குறைந்தபட்சம் 95 விழுக்காடு நிலைவைகேட்பில் (ருசசநயச) வசூலிக்கப்படவேண்டும்.
>
> (2) மற்றையவகை பணிகளை வாரியம் இதற்காக அதிகப்படுத்தக்கூடாது,
>
> (3) வசூல் செய்வதில் குறிப்பிட்ட முன்னேற்றம் காட்டாத அதிகாரிகளில் மேல் கடும் நடவடிக்கை எடுக்கப்படவேண்டும்.
>
> இந்நியமன அதிகாரிகள் பஞ்சப்படி மற்றும் இதரவகை படிகளை தற்பொழுதுள்ள விதிமுறைகளின் கீழ் பெற தகுதி உள்ளவர்கள்.ஞ

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19. Therefore, the said post of Revenue Officer, which was created temporarily in the cadre of the Chief Revenue Officer continued even as on today. Whether the Revenue Officer is in the cadre of Chief Revenue Officer as it is stated in the above G.O. or in the cadre of Assistant Secretary it remains the fact that as per Rule 4 stated above the appointing authority is the Slum Clearance Board.

20. A reference to the Tamil Nadu Slum Clearance Service Board Service Rules 1972, states while narrating about the posting and transfer under Rule 31 that all transfers and postings shall be made by the appointing authority. Rule 31 which runs as follows:

> "31.Posting and transfer.-(a) Member of a service or class of a service may be required to serve in any post borne on the cadre of such service or class.
>
> (b) All transfers and postings shall be made by the appointing authority.
>
> (c) The power conferred under sub-rule(b) may be exercised by the State Government or any authority to whom the appointing authority is subordinate."

21. Even by applying Rule 31(c), if the appointing authority for the post of Revenue Officer or Assistant Secretary is the Slum Clearance Board, the transfer can be effected only by an authority who is above the said appointing authority. In this case it can only be the State Government or the appointing authority itself, namely, the Slum Clearance Board. Therefore, without going into the dispute as to whether the post of Revenue Officer is within the 6 categories enumerated under the Tamil Nadu Slum Clearance Board Non Technical Officers Service Rules 1972, prima-facie one has to come into a conclusion, based on the G.O.Ms.No.708 dated 02.06.1987 that by creating the post of Revenue Officer in the cadre of Chief Revenue Officer, it remains a fact that the Slum Clearance Board, which is a corporate body is the authority for transfer, even for the post of the Revenue Officer.

22. It is also relevant in this regard to point out that the Tamil Nadu Slum Clearance Board Service Rules 1972, in rule 2(25) while speaking about the transfer, also states that the transfer shall be in the same cadre:

> "2(25) Transfer.- "Transfer" shall mean the posting of a person holding a post under the Slum Clearance Board to an identical post in another branch or Division of the Slum Clearance Board.
>
> Where the context so requires, "transfer" shall mean the appointment of a member of a category of a service to another equivalent category in the same service."

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23. A reference to the counter affidavit filed by the respondents show that it is not even the case of the respondents that the impugned transfer order has been passed by the Board and the Managing Director has only communicated the same. On the other hand, a bare reading of the impugned order shows that it is the proceedings of the Managing Director by which the transfer of petitioner as Revenue Officer North from Chennai to Madurai to work under the Superintending Engineer, has been passed.

24. In these circumstances, there is force in the contention raised by the learned Senior Counsel appearing for the petitioner about the jurisdiction of the impugned order of transfer. It is unfortunate that even after 8 years of the creation of the post of Managing Director to one of the important constituens of the State, no suitable action has been taken for the purpose of statutorily implementing the administrative decision of the Government by making necessary amendment to the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 with the result the post of the Managing Director, which has not been even equated to that of the Chairman but at the same time, stated to be the Chief Executive Officer of the Board remains an unrecognized entity while in fact performing the basic and vital functions of the Board.

25. Normally, when the transfers are made on administrative ground without affecting the cadre of a person transferred, without being tainted with some impunity and purely based on administrative reason, the courts will not interfere, since transfer is an incident of service. In the present case, even the transfers and appointments are subject to the statutory rules and necessarily the rules are to be followed, while effecting the transfer. When the rule makes the transfers to be effect only by the Board no other person including the Managing Director can have any jurisdiction to do the same.

26. In view of the peculiar circumstances, as I have stated above, this court has no other go than allowing the Writ Petition by quashing the impugned order of transfer. In view of the same the writ petition stands allowed. No Costs. Consequently, the connected W.P.M.P. and W.V.M.P. are closed.

सत्यमेव जयते

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Sd/-
Assistant Registrar

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Sub Assistant Registrar.

To

1.The Managing Director Tamil Nadu
Slum Clearance Board, no 5. Kamarajar Salai,

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Chennai -600 005.

+ One cc to Mrs. Hemalatha, Advocate SR 1984/07
+ One cc to Mr. K. Elango Advocate SR 1977/07

GGK (co)
sg 20/01/07

order in
W.P.No.19173 of 2006
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